

REMARKS

This Response is submitted in reply to the final Office Action mailed on September 7, 2006. A petition for a two month extension of time is submitted herewith. The Director is authorized to charge \$450 for the petition for extension of time and any additional fees which may be required, or to credit any overpayment to Deposit Account No. 02-1818. If such a withdrawal is made, please indicate the Attorney Docket No. 112701-519 on the account statement.

Claims 1-22 are pending in this application. In the Office Action, Claims 1, 3-4, 6 and 16 are rejected under 35 U.S.C. §102; and Claims 2, 7-15 and 17-22 are rejected under 35 U.S.C. §103. For the reasons set forth below, Applicants respectfully submit that the rejections are improper and should be withdrawn.

In the Office Action, Claims 1, 3-4, 6 and 16 are rejected under 35 U.S.C. §102(b) as anticipated by U.S. Patent No. 4,081,559 to *Jeffery* et al. ("*Jeffery*"). Applicants respectfully disagree with and traverse this rejection for at least the reasons set forth below.

Independent Claim 1 recites, in part, a melt-resistant fudge article that comprises a liquid fat component, for example, in an amount sufficient to minimize external adhesiveness of the article. For instance, the liquid fat component is in liquid form at room temperature. In contrast, Applicants respectfully submit that *Jeffery* fails to disclose or suggest every element of the present claims.

Jeffery fails to disclose or suggest a liquid fat or oil component as required, in part, by Claim 1. Instead, *Jeffery* is entirely directed toward a product using solid fats. In addition, Applicants submit an Affidavit under 37 C.F.R. §1.132 ("*Affidavit*" attached hereto as Exhibit A) that demonstrates the deficiencies of the prior art with respect to the present claims. As supported by the *Affidavit*, *Jeffery* fails to disclose or suggest a liquid fat or oil. Instead, *Jeffery* is entirely directed toward a product using solid fats (e.g. fats that are solid at room temperature).

As supported by the *Affidavit*, all of the embodiments taught by *Jeffery* use cocoa fat, a hard fat at room temperature suitable for molding. Moreover, *Jeffery* only teaches using, as a suitable partial cocoa butter replacement, hardened fats such as hardened palm kernel oil or a cocoa butter replacement fat. *See, Jeffery*, column 2, lines 35-36. *Jeffery* also teaches using hardened palm kernel oil in Example 2. In fact, all of the fats contemplated by *Jeffery* are in solid form, and the teachings of *Jeffery* would lead the skilled artisan to the same conclusion.

Moreover, as supported by the *Affidavit*, none of the fats disclosed by *Jeffery* are inherently liquid at room temperature. Liquid fats or oils have distinguishable structure and components when compared to fats in solid or hardened form. All of the suitable fats actually listed in *Jeffery* are in solid form because utilizing a liquid fat in *Jeffery's* product would render the product unsuitable for its intended purposes. Therefore, because *Jeffery* teaches only using hardened fats or fats in solid form as evidenced by the *Affidavit*, the fats used in *Jeffery* are distinguishable from the liquid fats used in accordance with the present claims.

In addition, *Jeffery's* product fails to achieve adhesion resistance provided to melt-resistant fudge articles by lubrication from a liquid fat component, e.g., fluid oil that is in liquid form at room temperature. In Applicants' product, the liquid fat or oil that resides at the open ends of the pores at the very outside edges of the final melt-resistant fudge article can provide a trace of surface lubrication to facilitate adhesion resistance, particularly to wrapping materials. In contrast, had too much solid fat been incorporated into Applicants' product (use of solid fat is what is normally used to provide melt resistance), then the degree of lubrication would be undesirably minimized or prevented. Therefore, Applicants respectfully submit that *Jeffery* urges the use of solid fat and does not teach or provide any reason that the solid fat should be replaced with liquid fat.

In sum, the cited reference fails to provide or recognize the advantages of a liquid fat to achieve adhesion resistance provided to melt-resistant fudge articles as Applicants' invention has done. *Jeffery* only teaches using hard fats that are solid at room temperature and also fails to achieve adhesion resistance provided to melt-resistant fudge articles by lubrication from the liquid fat component, e.g., fluid oil that is in liquid form at room temperature. For at least these reasons, Applicants respectfully submit that *Jeffery* does not teach, suggest, or even disclose all of the elements of Claim 1 and Claims 3-4, 6 and 16 that depend from Claim 1, and thus, fails to anticipate the claimed subject matter.

Accordingly, Applicants respectfully request that the rejection of Claims 1, 3-4, 6 and 16 under 35 U.S.C. §102 be withdrawn.

In the Office Action, Claims 2, and 7-15 and 17-22 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Jeffery* in view of U.S. Patent No. 5,108,769 to Kincs ("*Kincs*"), U.S. Patent No. 4,338,350 to Chen et al. ("*Chen*") and U.S. Patent No. 5,486,376 to Alander et al.

(“*Alander*”). Applicants believe this rejection is improper and respectfully traverse it for at least the reasons set forth below.

Applicants respectfully submit that the patentability of Claim 1 as previously discussed renders moot the obviousness rejection of Claims 2, 7-15 that depend from Claim 1. In this regard, the cited art fails to teach or suggest the elements of Claims 2 and 7-15 in combination with the novel elements of Claim 1.

Independent Claims 17 and 20 recite, in part, a melt-resistant fudge article that comprises a liquid fat component, for example, in an amount sufficient to minimize external adhesiveness of the article. In contrast, Applicants respectfully submit that even if combinable all of the claimed elements are not taught or suggested by the cited references.

As supported by the *Affidavit*, *Jeffery* fails to disclose or suggest a liquid fat component as required, in part, by Claims 17 and 20. In fact, *Jeffery* fails to even recognize the advantages of using same as taught by Applicants. Further, *Kincs* fails to disclose or suggest a liquid fat component. In fact, *Kincs* specifically teaches used hardened fats. See, *Kincs*, column 3, lines 16-53. Although the Patent Office alleges that *Kincs*’ teaches away from using hard fats, Applicants respectfully submit that, in the passage referred to by the Patent Office, *Kincs*’ is actually describing specific types of hard fats such as selectively hydrogenated and/or fractionated vegetable oils that result in a coating yield undesirable qualities. *Kincs*’ does not teach away from all hard fats because *Kincs*’ entails using other types of hard fats in his structured fat emulsion. See, *Kincs*, column 4, lines 11-19.

Chen also fails to disclose or suggest a liquid fat component. Similarly, *Alander* fails to disclose or suggest a liquid fat component and is instead directed to using hard or solid fats. Moreover, none of the cited references teaches or recognizes the advantages of using a liquid fat component in accordance with the present claims. For at least the reasons discussed above, the combination of *Jeffery* in view of *Kincs*, *Chen*, and *Alander* does not teach, suggest, or even disclose the present claims, and thus, fails to render the claimed subject matter obvious.

Accordingly, Applicants respectfully request that the obviousness rejection with respect to Claims 2, 7-15 and 17-22 be reconsidered and the rejection be withdrawn.

For the foregoing reasons, Applicants respectfully request reconsideration of the above-identified patent application and earnestly solicit an early allowance of same.

Respectfully submitted,

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